



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0243; A-1-FRL- 9945-12-Region 1]

Air Plan Approval; Vermont; Stage I Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Vermont. This revision includes regulatory amendments that clarify and Stage I vapor recovery requirements at gasoline dispensing facilities (GDFs). The intended effect of this action is to approve Vermont's revised Stage I vapor recovery regulations. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2015-0243 at <http://www.regulations.gov>, or via email to Arnold.Anne@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, fax number (617) 918-0660, email garcia.ariel@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Summary of Vermont’s SIP Revision
- III. EPA’s Evaluation of Vermont’s SIP Revision
- IV. Final Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background and Purpose

On January 26, 2015, the State of Vermont Department of Environmental Conservation submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Vermont's revised Air Pollution Control Regulation (APCR) Section 5-101, *Definitions*; APCR Section 5-253.2, *Bulk Gasoline Terminals*; APCR Section 5-253.3, *Bulk Gasoline Plants*; and APCR Section 5-253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities*.

Stage I vapor recovery systems are systems that capture vapors displaced from storage tanks at GDFs during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the delivery truck's tank. Some vapors are vented when the storage tank exceeds a specified pressure threshold, however the Stage I vapor recovery systems greatly reduce the possibility of these displaced vapors being released into the atmosphere.

Stage I vapor recovery systems have been in place since the 1970s. EPA has issued the following guidance regarding Stage I systems: "Design Criteria for Stage I Vapor Control Systems – Gasoline Service Stations" (November 1975, EPA Online Publication 450R75102), which is regarded as the control techniques guideline (CTG) for the control of Volatile Organic Compound (VOC) emissions from this source category; and the EPA document "Model Volatile Organic Compound Rules for Reasonably Available Control Technology" (Staff Working Draft, June 1992) contains a model Stage I regulation. EPA has also issued the following CTGs, relevant to this SIP revision: "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" (December 1977, EPA-450/2-77-026); and "Control of Volatile Organic Emissions from Bulk Gasoline Plants" (December 1977, EPA-450/2-77-035).

II. Summary of Vermont's SIP Revision

The Vermont APCR Section 5-253.2, *Bulk Gasoline Terminals*; Section 5-253.3, *Bulk Gasoline Plants*; and Section 5-253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities*, were initially approved into the Vermont SIP on April 22, 1998 (63 FR 19829). Vermont's APCRs required gasoline dispensing facilities throughout the state to install Stage I vapor recovery systems and satisfied Reasonably Available Control Technology (RACT) for gasoline dispensing facilities, bulk gasoline terminals, and bulk gasoline plants. The SIP revision approved on April 22, 1998 also included definitions in Section 5-101, *Definitions* that were associated with the VOC RACT rules.

On January 26, 2015, Vermont submitted a SIP revision consisting of its revised APCR Sections 5-101, 5-253.2, 5-253.3, and 5-253.5. This SIP revision includes regulatory amendments that clarify Stage I vapor recovery requirements, simplify definitions relating to gasoline storage and distribution at gasoline terminals and bulk gasoline plants, improve the consistency of the Vermont APCRs with federal requirements for GDFs, and help to ensure that VOC emission reductions achieved by existing Stage I vapor recovery systems are maintained.

Vermont's January 26, 2015 SIP revision included the amended APCR Section 5-253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities*, which was revised to clarify requirements in the existing Stage I vapor recovery regulation. Amongst other clarifying revisions in Vermont's APCR Section 5-253.5, the Stage I vapor recovery regulation was: revised to ensure awareness that GDFs must also comply with the federal regulations for GDFs, EPA's National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Gasoline Dispensing Facilities, 40 CFR part 63, subpart CCCCCC; revised to include definitions for "dual-point vapor Stage I vapor recovery system," "monthly gasoline throughput," and "startup"; and

revised to include a compliance schedule for the installation of dual-point Stage I vapor recovery systems for those GDFs not already so equipped.

In addition, the amended APCRs in Vermont's January 26, 2015 SIP revision were revised as follows: the amended APCR Section 5-101, *Definitions*, includes revised definitions for "bulk gasoline terminal" and "vapor balance system"; the amended APCR Section 5-253.2, *Bulk Gasoline Terminals*, adds a reference to a "vapor control system" in addition to the previous wording, which only referred to "vapor collection system," thus clarifying that the gasoline vapors displaced from gasoline tank trucks during loading must be collected and controlled, and that the emission limits from such vapors apply to both the collection and control systems; and the amended APCR Section 5-253.3, *Bulk Gasoline Plants*, was revised for clarity as a result of the revised APCR 5-101 definition of "vapor balance system."

III. EPA's Evaluation of Vermont's SIP Revision

EPA has reviewed Vermont's revised APCRs Sections 5-101, 5-253.2, 5-253.3, and 5-253.5, and has concluded that Vermont's January 26, 2015 SIP revision is approvable. Specifically, Vermont's revised regulations continue to be consistent with EPA's CTGs and meet RACT for the relevant emission source categories.

In addition, Vermont's revised APCRs included in the January 26, 2015 SIP revision are more stringent than the previously approved versions of the rules, thus meeting the CAA section 110(l) anti-backsliding requirements. EPA's most recent approval of APCR Sections 5-253.2 and 5-253.5 was on April 22, 1998 (see 63 FR 19825), Section 5-253.3 was on July 19, 2011 (see 76 FR 42560), and Section 5-101 was on October 5, 2012 (see 77 FR 60907). Vermont's revised APCRs submitted with their January 26, 2015 SIP revision are more stringent by incorporating the requirement for GDFs to meet the federal NESHAP and by clarifying that Stage I requirements apply

to vapor control systems as well as vapor collection systems. Furthermore, the defined terms and clarifications added to the Vermont APCRs ensure that all entities subject to the regulations clearly understand the applicable requirements.

Finally, we note that in certain instances the regulations we are approving authorize a Vermont “Air Pollution Control Officer” to make certain determinations or to require specific actions. In approving such provisions, although EPA’s authority regarding such determinations or actions is not expressly referenced in the regulatory text, EPA does not intend, and could not intend as a matter of law, to preclude EPA from exercising any legal authority EPA may have under the Clean Air Act and its implementing regulations. The regulatory language at Vermont APCR Section 5-253.5(c)(3), relating to determinations regarding whether a facility is being operated and maintained in a manner consistent with safety and good engineering practices for minimizing emissions, is one example of such a provision. Although the provision does not reference EPA’s legal authority, the provision would not, and could not, function as a legal matter to preclude EPA from exercising any relevant authority it may have under the Clean Air Act or its implementing regulations.

IV. Final Action

EPA is approving, and incorporating into the Vermont SIP, Vermont’s revised APCRs Section 5-101, *Definitions*; Section 5-253.2, *Bulk Gasoline Terminals*; Section 5-253.3, *Bulk Gasoline Plants*; and Section 5-253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities*. EPA is approving Vermont’s January 26, 2015 SIP revision because it meets all applicable requirements of the CAA and EPA guidance.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as

the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont's APCRs described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov>.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed,

and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 1, 2016.

H. Curtis Spalding,

Regional Administrator,

EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart UU - Vermont

2. In § 52.2370, the table in paragraph (c) is amended by revising entries for Sections 5-101, 5-253.2, 5-253.3, and 5-253.5 to read as follows:

§ 52.2370 Identification of plan.

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(c) * * *

EPA-Approved Vermont Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Section 5-101	Definitions	12/29/14	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	Revised definitions for “bulk gasoline terminal” and “vapor balance system.”.
**	*	*	*	**
Section 5-253.2	Bulk Gasoline Terminals	12/29/14	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 5-253.3	Bulk Gasoline Plants	12/29/14	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
**	*	*	*	**

Section 5-253.5	Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities	12/29/14	[Insert date of publication in the <u>Federal Register</u>] [Insert <u>Federal</u> <u>Register</u> citation]	
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[FR Doc. 2016-09068 Filed: 4/19/2016 8:45 am; Publication Date: 4/20/2016]